

COMMITTEE PROCEDURAL CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Petition for Extension of the) Docket No. 92-AFC-2C
Certification for the Sacramento)
Ethanol and Power Cogeneration)
Project (SEPCO))
_____)

HEARING ROOM B
CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

THURSDAY, JULY 1, 1999
9:00 a.m.

Reported by:
Peter Petty

COMMITTEE MEMBERS PRESENT

Robert A. Laurie, Commissioner, Presiding Member

David A. Rohy, Commission Vice Chairman, Second Member

Bob Eller, Commissioner Advisor

Gary Fay, Counsel, Hearing Officer

STAFF PRESENT

Chuck Najarian, Power Plant Compliance Program Manager

David Mundstock, Attorney, Staff

Chris Tooker, Air Quality Supervisor, Energy Facilities
Siting and Environmental Protection Division

PUBLIC ADVISER ASSISTANT

Priscilla Ross

ALSO PRESENT

John P. Grattan, Attorney, Grattan & Galati,
representing Sacramento Power, Inc.

Necy Sumait, Manager, Regulatory Affairs, Sacramento
Power, Inc.

Tim Howell, Attorney, United States Department of
Energy

Tim O'Laughlin, Attorney, Sacramento Power, Inc.

Patricia Stevens, Senior Planner, Planning Department,
County of Sacramento

Karen Ziebron, Chief of Staff, First District, County
of Sacramento

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P R O C E E D I N G S

9:00 a.m.

PRESIDING MEMBER LAURIE: Good morning.

This is a conference meeting to discuss the procedure to be followed in light of the request for extension to start of construction deadline filed for the SEPCO project.

Introductions. My name is Robert Laurie, I'm Presiding Member of the Commission's Siting Committee, which has jurisdiction over this matter. To my left is Vice Chairman of the Commission, Dr. David Rohy, who sits with me on the Siting Committee.

And to Dr. Rohy's left is Bob Eller, Dr. Rohy's Advisor. To my right is Mr. Gary Fay, legal counsel, who is acting as Hearing Officer for this case.

I'd like to have some applicant introductions and staff introductions. This matter is being transcribed so if you could all speak slowly and loudly. If the transcriber has any problem they are to let us know, please.

MR. GRATTAN: I'm John Grattan, Grattan & Galati, and I represent the applicant here, SPI. And this is Necy Sumait, who is the Regulatory Program Manager from SPI.

MS. SUMAIT: I also want to introduce a couple of people in the audience. On the last row is Mr. Tim Howell. He is with the U.S. Department of Energy. At the other end of the room in the back row is Tim O'Laughlin; he is our special counsel for water supply issues.

PRESIDING MEMBER LAURIE: Thank you. I should note that these are not amplifying microphones.

I think these are only for the purpose of the transcriber. And the acoustics in this room are extremely poor. So I would ask all of you to cooperate and speak loudly. Plus the fact that I'm old, and I can't hear.

(Laughter.)

PRESIDING MEMBER LAURIE: So, any assistance you can render would be extremely helpful.

And staff, please?

PROGRAM MANAGER NAJARIAN: My name is Chuck Najarian. I'm the Power Plant Compliance Program Manager for the Energy Commission.

MR. MUNDSTOCK: I'm David Mundstock, attorney for the Energy Commission Staff.

PRESIDING MEMBER LAURIE: Thank you, gentlemen.

Mr. Fay, would you like to take a minute and talk about procedure?

HEARING OFFICER FAY: Yes, thank you, Commissioner Laurie. If anybody has trouble hearing me, please raise your hand, because I want to be sure that we all understand.

A few preliminary matters. We have allowed the time from 9:00 to noon to conduct this hearing. If we have to go beyond, I suppose we will, subject to the availability of the Commissioners. But certainly no more than an hour beyond.

PRESIDING MEMBER LAURIE: Extra points will be granted if we finish by 10:00 o'clock.

(Laughter.)

HEARING OFFICER FAY: There we go. There we go.

PRESIDING MEMBER LAURIE: Free ice cream.

HEARING OFFICER FAY: We also have a Public Adviser, Priscilla from that office has just stepped in. The Public Adviser's Office is available to help

anybody participate in the proceedings.

So this is particularly important for people who are not professionally represented. For instance, if there is somebody here from the Rio Linda community.

Is there anybody?

All right, I see no indication. But somebody like that might want to take advantage of the Public Adviser's Office. And they can either contact Priscilla or just raise a hand at anytime during the proceeding. I'd be glad to help explain the process, as we go, and indicate how the Public Adviser's Office can help individuals participate.

What we'd like to do today, as we get into this, is answer the Committee's questions that were put out in the notice. The notice was sent out on June 16th, and contained a number of questions for this procedural conference. And the parties served the Commission and each other, so everybody sort of knows what the other's take on this is.

And we wanted to get the wisdom of the parties on how we ought to organize and conduct this process on the extension.

So what we'd like to do is go question-by-question and hear from each party. If you have nothing to add to your written remarks, then please indicate that. We're not here to pad the record, just to elucidate it, as necessary, and then move right along.

So we'll just go through all the questions that way, and then at the end we'll address scheduling, which I think is very important. But I think we need to wait till the end so we can sort of understand what it is we have to schedule.

PRESIDING MEMBER LAURIE: I think, Mr. Fay, I'd like to give Vice Chairman Rohy an opportunity to offer any thought or comment before we start.

COMMISSION VICE CHAIRMAN ROHY: I appreciate the opportunity. I am looking forward to the positions of the parties and we'll work directly with all of us. Thank you.

MR. GRATAN: May I steal the microphone for just a second, Commissioner Laurie. I'd like to introduce, or at least give her the opportunity to introduce herself, a representative from the County of Sacramento. The Senior Planner from the Sacramento

County Planning Department, Tricia Richards.

MS. STEVENS: It's Patricia Stevens.

MR. GRATTAN: Stevens. Anonymity blown.

PRESIDING MEMBER LAURIE: Patricia Stevens, thank you.

HEARING OFFICER FAY: And, Ms. Stevens, we hope you will feel free to -- in fact, you may want to be up at the counsel table so that you can just chime in at any point in the process, as you wish. But we certainly want to hear from the County on what they think their role should be, whether it's changed or not, that type of thing.

PRESIDING MEMBER LAURIE: For purposes of protocol, my preference is to treat this meeting as one of a more informal nature, rather than formal nature. We are not creating a record for purposes of decision making today; rather, we're to talk about predominately process. And the ability to have us all speak freely and openly to the extent that you feel able to do so, it would benefit that process.

So, I would simply ask that if you have something to say, let us know, and it will not

necessarily be a formal order of presentation, if that's satisfactory to everybody. I see no dramatic shaking of negative heads, and that's how we'll proceed today.

HEARING OFFICER FAY: Okay, --

PRESIDING MEMBER LAURIE: Negative heads.

HEARING OFFICER FAY: Turning to the Committee's questions, then, the first one is what are the elements of the demonstration of good cause as intended by the Commission's regulations, section 1720.3, which addresses the subject of extension or license.

Mr. Grattan, anything to add to what you sent us?

MR. GRATAN: No, we have nothing to add to what we submitted.

HEARING OFFICER FAY: Okay, let me ask, have you looked at the Staff's items that they posted, which they said many were derived from section 1769(a) for post-certification amendments? So I think they were trying to relate this process to something else that we do and are familiar with. Do you have any particular

concerns with those criteria, the (a) through (g)?

MR. GRATAN: Well, they sound a lot different from ours; when you distill them down they're not terribly different.

One thing that I would like to point out is on item (d), the extension does not result in fundamental or substantial changes to the project description, particularly changes that would have prevented certification originally.

We don't believe that that is necessary. It's a request for an extension. And that to engraft on it a provision that it might not lead to changes that might have prevented certification originally, we think that's a bit of a leap. And we think they ought to look at the extension, or at least at the extension and we have proposed minor modifications to it. That issue is not before us.

HEARING OFFICER FAY: Okay.

PRESIDING MEMBER LAURIE: I'd like to ask a question of staff. Looking at your proposed criteria, it appears that you are equating a good cause extension request with the criteria necessary for a modification

request. Is that basically correct?

PROGRAM MANAGER NAJARIAN: That's correct; in part, that's correct.

PRESIDING MEMBER LAURIE: You see no difference in policy between a request to modify a project and a request to extend a project unmodified?

PROGRAM MANAGER NAJARIAN: We see differences, but we also see a lot of similarities. And in light of the fact that we're not offered a lot of guidance with regard to 1720.3, the extension request regulations, we felt this was most appropriate to refer to.

PRESIDING MEMBER LAURIE: Okay.

MR. GRATTAN: Let me put in a plug for our criteria while we're at it. We've laid out three elements. We looked at the water code for extension of a water right, which is a property interest, a little bit more of a property interest, certainly, than a license. And we distilled it down.

The elements are the fact that the applicant has used due diligence to pursue the permitting -- excuse me, to pursue the financing and whatever might

lead to construction. There were circumstances which the applicant couldn't reasonably avoid. And that there's some showing that there'll be satisfactory progress if the extension is granted.

We think that that is fairly simple, that it is certainly more stringent than most administrative agencies, than the criteria most administrative agencies use when granting a permit extension. They're sort of -- most agencies, our survey indicated that they're granted almost as a matter of right.

We don't purport to do that with a five-year extension, but we think that perhaps looking to sister agencies might be -- to sister agencies' criteria for granting an extension might be more relevant than looking within the Energy Commission at its criteria for granting a modification.

PRESIDING MEMBER LAURIE: Is it fair to say then that you do not concur with staff's recommendation for criteria to find good cause?

MR. GRATTAN: We --

PRESIDING MEMBER LAURIE: It's okay if you don't.

MR. GRATAN: Yeah, we do not concur at least with subsection (d), but we believe we could meet all that criteria. The Committee has got to look beyond the facts of this case, and look to precedent.

PROGRAM MANAGER NAJARIAN: Commissioner Laurie, may I add one --

PRESIDING MEMBER LAURIE: Sure.

PROGRAM MANAGER NAJARIAN: -- other point of information with regard to letter (d) in our criteria, having to do with substantial and fundamental changes to the project.

We feel strongly about this because the point of reference is the original license. The original license is pretty specific about what's required, both in the original decision and the amendment that followed.

We don't think it's appropriate to leave that original point of reference behind and ignore it.

And so we would feel strongly that (d) is an important element in the criteria.

In addition to that, I think given the fact that the applicant has referenced the water board's

criteria, I'd like to have Mr. Mundstock address other elements in that criteria that probably need to be surfaced at this point, to make a full picture.

MR. MUNDSTOCK: Well, first of all, a proposal to make beneficial use of water is much more modest than a power plant. It doesn't involve nearly the level of complexity that our license does. So we don't think it's an appropriate reference.

If you want to talk about the water code and the regulations, as the applicant suggested, we should look at the entirety of it. And I have copies.

The Committee should consider the variety of citations the water board presents. And the one that is actually the most interesting would be section 1410 of the Water Code, which is the cause for revocation. And that's on the last page.

And it says that there shall be cause for revocation of a permit if work is not commenced, prosecuted with due diligence, and completed, or the water applied to beneficial use as contemplated in the permit.

And so I think that the standards, again, as

contemplated in the permit, goes directly to what we talked about in our criteria (d), that there shouldn't be a fundamental change in the project.

HEARING OFFICER FAY: Is this a question of degree? I mean obviously any project that has had some time pass is going to have to go through some adjustment to get an extension just because the laws have changed, perhaps the standards have become a bit tighter. And so something like that would involve a change even if the applicant wasn't modifying its project. And so on, up the line, until you have something that's really quite a different project than the one that was licensed.

So we're dealing with a continuum here, aren't we?

PROGRAM MANAGER NAJARIAN: That's correct. We acknowledge in our response, we refer to substantial or fundamental changes. And we understand we are dealing with degrees, and the issue that's going to be before us is at what point does this convert to something else.

HEARING OFFICER FAY: And that that is part,

in your judgment, that that is part of the question of good cause?

PROGRAM MANAGER NAJARIAN: That's correct, yes.

MR. MUNDSTOCK: It is also an unusual project. If you look at the first request for an amendment that resulted in a decision dated January 1995, the applicant came in asking to build a stand-alone power plant. And the Committee, at that time, was quite clear that that was a fundamental change, would not have allowed certification originally, and rejected the proposal, and did allow for some modifications.

But the Committee was quite strong at that time that the integrity of the original decision had to stand, the configuration had to stand, it had to be the project as certified.

And I think that given the unusual nature of this particular project, the circumstances under which it was handled, the relationship between power plant and the ethanol plant, there are additional layers of complications that go into applying criteria for good

cause; specifically as to when you have a project before you that could not have been certified originally, and would not have been certified.

MR. GRATTAN: If I can -- every project is unusual. And if we want to discuss the issue of fundamental changes to the project, and what type of processing would be required, we can join that issue with respect to a later question.

PRESIDING MEMBER LAURIE: Mr. Grattan, we will join that issue.

MR. GRATTAN: Yeah. And I think that my suggestion is that might be the appropriate place to join that issue. On the petition you have before you, or the answer to the Committee's questions, that the issue of fundamental changes really isn't before you. And, you know, I --

PRESIDING MEMBER LAURIE: Thank you, appreciate that. Let me ask, in that light let me ask another question of staff.

Absent any other order, is not the applicant required to build in substantial compliance with the currently issued certificate?

PROGRAM MANAGER NAJARIAN: That's correct.

PRESIDING MEMBER LAURIE: Okay, thank you.

HEARING OFFICER FAY: Okay. Anything further, then, on the good cause question? Many of these kind of overlap.

In terms of evidence that would be required, Mr. Grattan, --

MR. GRATTAN: I'm sorry, Mr. Fay, if I can add one more thing?

HEARING OFFICER FAY: Oh, sure.

MR. GRATTAN: The issue of substantial changes, just that -- I would suggest that the staff has covered that in our criteria, and we implicitly have covered it in our criteria by the requirement that the environmental impacts of the decision to extend the project be looked at.

And we did not put that in our criteria because we view that as the second part of the inquiry.

But we accept that as a criteria.

PRESIDING MEMBER LAURIE: It is still a necessary part of our discussions today.

MR. GRATTAN: Yeah, and that's where I think

that would be.

HEARING OFFICER FAY: Okay. It looks like you didn't address question two, but do you have any problem with staff's brief covering of that? Question two asks what evidence is relevant to assist the Committee in determining good cause.

I suppose you've covered some of that, but you would make it a more narrow examination.

MR. GRATAN: And, you know, we believe that our letter presented a prima facie case for a good cause extension under either criteria, certainly under our criteria, and the staff, in fact, acknowledged that in its response to the petition.

And we would think that unless that prima facie case is refuted by a showing of evidence, or an offer to show evidence, that it's much more efficient and just for the Committee to allow that to stand unless refuted, that you don't need to bring an evidentiary hearing unless there are disputed facts.

HEARING OFFICER FAY: Okay.

PRESIDING MEMBER LAURIE: Well, Gary, let me direct this question to you. What's your understanding

as to the necessity of the creation of the administrative record to support the Commission's decision making?

HEARING OFFICER FAY: I think it's very important. I think the fact that the matter may not be in dispute is probably not sufficient for the Committee to make its finding of good cause. This is not to say that there has to be an elaborate hearing just on that question.

But however the Committee thinks that they need to slice the criteria for good cause versus examining the environmental impacts, I do think they need an evidentiary record on which to base their finding of good cause.

And it may just be as an introduction to all the environmental examination we would have some representative from the company review, you know, what has happened in the past, et cetera, under oath.

But I think we need an evidentiary record, although it doesn't need to take a lot of time to develop.

PRESIDING MEMBER LAURIE: So there's nothing

in the rules that says we have to go through the formality of sworn witnesses or any of that?

HEARING OFFICER FAY: The parties have both indicated that there's a tremendous amount of discretion on the Committee's part in deciding what is good cause in this situation.

It would be my recommendation, though, that you have a formal evidentiary record on which to base your findings.

PRESIDING MEMBER LAURIE: But need a formal evidentiary record be based upon the formality of sworn testimony --

HEARING OFFICER FAY: Yes.

PRESIDING MEMBER LAURIE: -- like we have in siting cases?

HEARING OFFICER FAY: Yes.

PRESIDING MEMBER LAURIE: And why is that?

HEARING OFFICER FAY: Well, you don't have testimony if it's not sworn. It's got to be under oath, subject to cross-examination. That's the evidentiary basis on which you can base a finding in a quasi-judicial hearing.

PRESIDING MEMBER LAURIE: Okay. Any further comment on that point? All right.

HEARING OFFICER FAY: Staff, anything further on question two?

PROGRAM MANAGER NAJARIAN: No.

HEARING OFFICER FAY: Okay. Question three, then, what, if any, additional environmental review is necessary beyond the analysis submitted by the staff in its business meeting memo?

In asking that I really wanted to understand how far we'd gone with that first cut. And staff laid out to my satisfaction that that was preliminary. And it sounds like, Mr. Grattan, you agree that there is going to have to be, you know, a CEQA level examination of how the LORS changed vis-a-vis the original license, and that type of thing, is that correct?

MR. GRATTAN: That's correct.

HEARING OFFICER FAY: So, I imagine that we really don't have any dispute there. It's a question of -- my sense is it's a question of how we get the stuff, how long it will take to come in. Because, of course, it's not all under our control. There's other

agencies involved.

PRESIDING MEMBER LAURIE: Question, Gary. How would you expect staff to proceed in regards to scoping of the issues to be determined? Would you anticipate there be a scoping session with the results brought back to the Committee? Environmental analysis could be a substantial effort.

And I don't want to be in a position of having utilized "x" amount of resources, have the matter brought back to us, and have the Committee determine that 40 percent of what was done we don't feel was necessary.

So, can we practically have the staff conduct a scoping session, and maybe have a status conference for further discussion? Is that appropriate?

HEARING OFFICER FAY: I think so. I would hope that we can flesh out some of that today, or at least the Committee can learn enough to put some guidance in an order. But perhaps beyond that, the parties would have to meet and come up with hopefully a joint recommendation as to more details on scope.

But I think that's a good point. We sure don't want the staff to think that it's much greater -- much more is required than the Committee thinks is required, and have to spend a lot of resources unnecessarily.

MR. GRATTAN: I would suggest that maybe we could focus this, and that the staff and the applicant could agree on what it is we need to look at. We put what's okay over here, where the LORS or standards haven't changed. And we put, I think we know what the big ticket items are.

HEARING OFFICER FAY: Aren't you a long way down that path?

MR. GRATTAN: I think the staff is a long ways down that path.

HEARING OFFICER FAY: From what was presented at the business meeting? It seemed like a preliminary effort identified the areas where new things have to be looked into. And in some cases, whole infrastructures, right? The water and fuel supply system will be different than the original license?

PROGRAM MANAGER NAJARIAN: Staff's submittal for the May 26 business meeting did tend to focus in the areas we thought were appropriate in terms of what we saw as changes to laws or to regulations and standards.

The only other element is some unknowns about the project that we point out in several of our responses, including question number three, and I believe question number seven, we presented a rough schedule, such as water supply, fuel supply, transmission interconnection studies, and issues associated with that potentially.

MR. MUNDSTOCK: The Committee is aware that the original power plant, as certified, was a SMUD power plant that was intended to serve SMUD's needs. And several aspects of that project were directly related to SMUD, such as fuel supply for example. The SMUD gas line was the fuel supply. Now there is no fuel supply identified.

Transmission was going to be through SMUD. There is no transmission identified. Water is a good example of an environmental issue that has been a

problem from the beginning. And the applicant has made diligent attempts to solve that. I believe they're going to be presenting their fourth water proposal. And we don't know what it is, and so we can't analyze it until we receive it.

HEARING OFFICER FAY: Right, but there's no dispute that that has to -- all three of those that you mentioned have to be identified, described and analyzed?

PROGRAM MANAGER NAJARIAN: We don't believe there is.

MR. GRATTAN: No, we agree with the items pointed out in the May 26th staff report, and we're prepared to respond and act on that.

HEARING OFFICER FAY: Right. Okay.

MR. GRATTAN: And if we can -- we can put the rest of it aside.

HEARING OFFICER FAY: Um-hum.

PRESIDING MEMBER LAURIE: Well, my original inclination, and Commissioner Rohy and I will discuss this further, is to, even though there may be basic consensus, I'm inclined to suggest that staff actually

notice, if notice is required, a scoping session. And then we would review the results of that and issue a scoping order.

I would like to have further ability to have staff and applicant discuss the matter among themselves. The Committee may or may not agree with the results of that.

If we can act on that today, we will. I'm not satisfied that we will be in a position to do so. But we'll discuss that before we go home today.

HEARING OFFICER FAY: Any further reaction, Mr. Grattan, to staff's answer on question three?

MR. GRATAN: No.

HEARING OFFICER FAY: Okay.

MR. GRATAN: No. We basically agree with that.

HEARING OFFICER FAY: Sure. Now, the reason I asked about the three-year extension, that's what the applicant requested. Staff didn't challenge that at all. But is this enough time to realistically take care of what needs to be done, and for them to get started on construction?

PROGRAM MANAGER NAJARIAN: Our response to this question was essentially to try to put an envelope around a potential timeframe here. We're even thinking beyond this particular proceeding in terms of future policy questions.

We wanted to first place an envelope around it, and we assumed that was five years. And we wanted also to communicate that essentially the sooner the better, because things begin to get stale. The license is already stale.

And so I think we emphasized that in our response, as well.

HEARING OFFICER FAY: But presumably if you do a thorough job examining in the months ahead, however long that takes, and the Commission decides to grant an extension with conditions, that would be adequate for at least a couple years or --

PROGRAM MANAGER NAJARIAN: That would be the objective, yes.

HEARING OFFICER FAY: Yeah, okay. I mean we'd be talking about a period shorter than five years

into the future from the time the Commission granted an extension.

Anything further on that, Mr. Grattan?

MR. GRATAN: We've set out what we believe to be a justification for the three-year timeframe.

HEARING OFFICER FAY: And you think it's doable. What you need to do in terms of the showings and all can be done with a three-year extension, and you could move on with your construction plans?

MR. GRATAN: Yes, with a caveat. We would measure that three years by the time this Committee's and Commission's exercise was over.

HEARING OFFICER FAY: The Commission granted the extension, sure. Sure.

Okay, then we asked if the staff memorandum identified all the changes that needed to be made, and apparently it did not. And we will be, I guess, learning about others as the case unfolds.

Does that necessarily get into modifications, I guess my question is to you, Mr. Grattan, or is this also --

MR. GRATAN: Since we --

HEARING OFFICER FAY: -- I suppose it also has to do with other agencies. For instance, if to meet current LORS you learn something new from, say, the air district, that you didn't expect before, that might include additional changes, correct?

MS. SUMAIT: My read of staff's response is that the issues have been identified, yet the specific conditions of certification pertaining to those issues identified in the May 26 report, has not yet been looked at. Is that --

PROGRAM MANAGER NAJARIAN: Yeah, --

MS. SUMAIT: Or are you saying there are new -- okay.

PROGRAM MANAGER NAJARIAN: Staff is relatively comfortable that we've identified the areas that we would continue to address. I think the scoping session would further define that, as you suggested.

What we're saying is that given the fact that it was a preliminary review, and we didn't have all the information yet, we're not really specific about which conditions need to change and how they need to change.

MS. SUMAIT: Right.

PROGRAM MANAGER NAJARIAN: That's something that we need to continue to work on.

HEARING OFFICER FAY: Okay, and anything further on that, then?

MR. GRATAN: No, basically we agree with staff. We have raised, in our response, the issue of the modifications which we would propose immediately. There's a whole other section of the Committee's questions which relate to that, but I did want to raise that issue --

PRESIDING MEMBER LAURIE: If you don't mind, and that is very much the crux of our discussion today, so let's talk about that now.

MR. GRATAN: Right now?

PRESIDING MEMBER LAURIE: Yes. I sense that staff is concerned about it, you're aware of the issue, the Committee is aware of the issue, and is concerned that what we are engaging to act upon is, in fact, the project that you intend to construct.

There's a question of your intentions; there's a question of your timetables. I must inquire

then as to the propriety of moving forward with the request to extend until such time as it is coupled or replaced by a request to modify.

I think we all have an understanding that circumstances may have changed; that your needs today may be different than your needs five years ago; and that you may want to modify the proposed project.

If so, then that's what we should be looking at, and a determination should be made as to the substantiality of that modification, to see if it fits within 1769.

So the question to be proposed, and I'll let others propound the question differently than I, as appropriate.

You've indicated in your papers that there is an intention to submit a petition to modify. Why don't you go ahead and talk about that. What can we expect out of it?

MR. GRATAN: Yes, and we've mentioned this in our filing. That if our license remains viable we would propose to make three changes and to adjust the conditions of certification to reflect those, that the

Committee adjust the conditions of certification to reflect those changes.

Those changes would allow us to stage the ethanol project first. It would leave the power plant as is while we pursued the remaining time on that extension, were it granted, to put together a power plant proposal, either as the same or modified.

But what we want the Commission's Committee to focus on right now is, were we granted the extension, we would come in with a request to allow construction of an auxiliary boiler to support the ethanol plant; allow some changes to the process and addition of certain vessels within the footprint of the plant to allow us to produce, in addition to ethanol, citric acid. This limits our market risk.

And the third would be to designate a water supply for the ethanol plant's use.

PRESIDING MEMBER LAURIE: Is it your intent -- should we interpret your intent as determining first whether or not the request for extension is granted before you submit your proposed modifications?

MR. GRATAN: No. We will come in, I think

August 1st is what we've committed, with a modification proposal. It will look, and maybe will be, a modification proposal indicating the conditions of certification that we think would require changing, and living up to all the other conditions in 1769.

We think that that way, when the Commission reviews the environmental impacts of the extension, that it has the reasonably foreseeable impacts of granting that extension. It shows the public what we're about, rather than coming in on good cause, adjusting conditions based on changed circumstances, and then coming in with a modification request.

PRESIDING MEMBER LAURIE: So would it be your understanding that if the world moved as you desired, when this process is completed you would have an order not only extending time, but modifying the project, as well?

MR. GRATAN: Yes, although we understand that the project has to be, in terms of the Committee/Commission decisions, the project has to be amended first, and then the extension request granted. But we view that that could take place at the same

meeting.

COMMISSION VICE CHAIRMAN ROHY: May I ask a question? If I could speculate for a moment, and in light of what you said about the power plant being perhaps bifurcated or delayed from the ethanol plant, my question has to do with our authority should the power plant not be ever built.

Would our permit have any value or legitimacy in a court of law for this ethanol boiler plant should the power plant never be constructed?

And if there were no power plant, who would be the authority to approve this?

MR. GRATAN: Sacramento County is here. Would you like to address this?

MS. STEVENS: Well, maybe the staff should say something first.

PROGRAM MANAGER NAJARIAN: Maybe I'll just add one thing in an attempt to respond to that question, because it's something that we've thought a lot about, ourselves.

As compliance program manager the last thing I'd want to do is get involved in engaging in

compliance and monitoring activities for a stand-alone ethanol plant. And there's probably several things we can do to avoid that and still move this proceeding along, and account for that possibility.

And we've talked about some options. And one option was essentially to insure that if the power plant wasn't built, or if it was, wasn't linked to the ethanol facility, that there would be some consideration to pass that authority or that responsibility back to Sacramento County in that instance.

That still leaves us with compliance and monitoring functions for mainly construction, and potentially some operation of the new ethanol facility.

The other option is to allow Sacramento County, essentially, or give -- not take responsibility, the Commission not take responsibility for the monitoring and compliance activities for the ethanol facility from the very start.

And if the power plant is built and if it is linked to the ethanol plant, that responsibility could come back to the Commission if it's desirable with the

County.

PRESIDING MEMBER LAURIE: So, is it your position that as we go through this process unless it is made clear -- that's a leading question. I'm not trying to do that, I apologize.

Is it your position that there must be a link between the two plants, and that it must be reflected in the intentions of the applicant?

PROGRAM MANAGER NAJARIAN: Yes, that's correct.

PRESIDING MEMBER LAURIE: Okay.

HEARING OFFICER FAY: Did you want -- Ms. Stevens, is it?

MS. STEVENS: Yes.

HEARING OFFICER FAY: Do you want to respond? Does the County have a preference?

MS. STEVENS: We, at this point we haven't really determined our preference. If we end up with a stand-alone ethanol facility, if it turns out that it makes more sense for CEC to take a lead to a certain point, and then turn it over, or if we take the lead from the very beginning, it could happen either way.

At this point we're assuming that the CEC would take the lead in terms of the permitting and initial compliance. But if it needs to change, then we'd be open to that.

HEARING OFFICER FAY: Okay.

PROGRAM MANAGER NAJARIAN: There's a certain

--

PRESIDING MEMBER LAURIE: Let me ask you if all there was was an application for an ethanol plant, whose jurisdiction would that fall under?

HEARING OFFICER FAY: The County, clearly.

PRESIDING MEMBER LAURIE: And you understand that?

MS. STEVENS: Yes, um-hum.

PRESIDING MEMBER LAURIE: Okay.

HEARING OFFICER FAY: I suppose one scenario is if the applicant got everything they wanted, and the Commission conditioned and followed up, did all the monitoring and compliance on the ethanol facility, at the end of three years, and clearly there would be no power plant if construction had not begun, at that point is it your thinking that the license would be

designed, so that would be a condition that it would automatically go back to Sacramento County? Is that one possibility?

PROGRAM MANAGER NAJARIAN: That's one option, yes.

HEARING OFFICER FAY: Now, if you started that at the outset, then you're sort of prejudging that there's a small chance that the power plant will be coming on line, giving the ethanol project back to the County at the outset, and that might have to be undone --

PROGRAM MANAGER NAJARIAN: That's correct.

HEARING OFFICER FAY: -- to keep the linkage? Do you have a preference at this point?

PROGRAM MANAGER NAJARIAN: We haven't reached a final consensus on this yet. We are concerned about it. And ultimately we need to decide.

My feeling was that more information is going to be presented in this proceeding, including the August 1st submittal. And that information might be more helpful in helping us reach a decision on this in terms of what our preference might be.

HEARING OFFICER FAY: Okay.

PROGRAM MANAGER NAJARIAN: But we're prepared to do whatever the Committee asks us to do, but --

HEARING OFFICER FAY: The Committee could still keep this process moving forward --

PROGRAM MANAGER NAJARIAN: That's correct.

HEARING OFFICER FAY: -- without you making that decision, I suppose. In fact, it seems like we could be quite far along, and the Commission could ultimately just make that a condition at the end, right, a contingency?

PRESIDING MEMBER LAURIE: Gary, let me ask, we don't have the authority to impose requirements upon the County to assume jurisdiction or take over. So is there -- one, that's a question.

Two, if that's correct, should there not be an understanding between the County and the Energy Commission reached earlier that would provide for transfer of jurisdiction should certain events occur?

HEARING OFFICER FAY: Yes, I think that's a good idea, although I believe there is in place an MOU

right now. And I suppose that would have to be reviewed to see how perhaps a modification or addendum could be added.

PROGRAM MANAGER NAJARIAN: That's correct. There's one point of clarification. The Commission was offered, and agreed to accept, responsibility for the environmental review and the compliance and monitoring for the ethanol plant, given the fact that the ethanol plant and the power plant are essentially linked.

We don't have jurisdiction over the ethanol facility. We didn't take jurisdiction from the County in that regard. We just had an agreement, a memorandum of understanding, to take that responsibility. And that's what's in place today.

HEARING OFFICER FAY: So you'd also have, by operation of law, there would be no basis at the end of three years, since there was no power plant commenced, the Commission would have no basis whatsoever for being involved in the ethanol project.

I would think essentially automatically it would have to fall to the County at that point.

MS. STEVENS: Yeah, that's our

understanding.

MR. GRATAN: We met with the County yesterday, and that is our understanding, that if after three years, and we'll submit a condition in our -- proposed condition in our August 1 submission, after three years construction hasn't begun on the power plant portion of the project, that to resolve any uncertainties, the jurisdiction over the ethanol plant would go to the County, and the responsibility for enforcement and monitoring would go to the County, unless the County and the Energy Commission reach some other agreement that was in their mutual interests.

But we would end the uncertainty. I mean we would propose to end any uncertainty of where is this power plant, and how long is that Energy Commission going to retain compliance and monitoring over an ethanol plant that is subject to a zoning agreement by the County of Sacramento.

PRESIDING MEMBER LAURIE: Well, we don't know, sitting here today, how that condition would end up, how that condition might read. I think it's fair to say that when the Committee acts, the Committee

wants to know what the true intentions of the applicant are.

And it could be that if the applicant indicates an intention of maintaining the tie between the two plants, then we may appropriately condition the extension that way. And, again, I don't want to speculate how that might read.

If that's a concern, if your true intentions, and you don't have to respond to this, but if your true intentions are to build the ethanol plant because that's all that's economically feasible today, then that should be thought about and take a different route than what the manner in which you're currently proceeding.

MR. GRATAN: Our true intentions are not to walk away from the power plant license if we can maintain it, and not to walk away from the option of building a power plant on that site.

We are not the sole decision maker, unfortunately, with regard to bringing that intention to a reality.

PRESIDING MEMBER LAURIE: Okay, the

difficulty I have with that is you've indicated -- you just indicated having the option of building the power plant. And as I understand the original certification, and the manner under which staff is proceeding, is it's not an option, that there's a mandate --

MR. GRATAN: I --

PRESIDING MEMBER LAURIE: -- right?

MR. GRATAN: I didn't know a license was a mandate. But, I mean there is -- that is what we would like to fulfill, the conditions that were presented to us in the grant of the license.

MS. SUMAIT: I guess you're alluding to the cogeneration aspect and all of that. This project has a long history and soon after we had finished the SMUD settlement, we are pursuing both projects. And we are out there on the power plant as well as the ethanol plant.

It just so happens that our efforts right now are becoming more and more successful and the light at the end of the tunnel looks brighter for the ethanol plant. Things are moving faster at the ethanol plant.

We have not -- we don't wish to relinquish

our right on the power plant. We want to continue the options that we have before us. It's not quite as advanced as our negotiations and our progress on the ethanol plant, but we wanted to have the ability to do both.

Because the ethanol plant is in the stage where it is more advanced than the power plant, we need to make certain that it can operate independent of the power plant. And that linkage with the cogeneration prevents that.

And so we would want to allow, there's an auxiliary boiler that's currently in the power plant license, we basically take that out and permit a stand-alone boiler to be able to provide the steam to the ethanol plant for its process.

And we have said in our submittals that in the event that there is a power plant from an air emissions point of view, we would agree to some kind of bubble in which the boiler then would cease operation if there was steam available from the power plant.

So, you know, we're not at a point wherein we've given up on the power plant. It's just that our

efforts are becoming more successful on the ethanol plant, and we're trying to put in a project schedule that, you know, would allow us to get construction of that facility ahead of the power plant.

PRESIDING MEMBER LAURIE: Okay, this is my problem. We don't want to do anything to discourage the construction of an ethanol plant. That's great. But I have not studied the matter in depth, but I'm told and I'm advised that when the original certificate was granted that it was not presented as an option, you can either do A or B, but rather you cannot do A unless you do B, and you cannot do B unless you do A.

Is that your understanding, Mr. Fay, and staff?

HEARING OFFICER FAY: It's a license for a cogeneration project which means both parts had to be -
-

MR. MUNDSTOCK: Yes, and the reason was that at that time the notice of intention exemption was only available for a cogeneration plant. So they could only be exempt from the NOI if they were a cogeneration plant. It could only be a cogeneration plant with the

ethanol plant. The ethanol plant could only be built if the County provided a rezoning decision. The rezoning decision required a CEQA analysis. We agreed to do the CEQA analysis. That's how everything was linked together.

PRESIDING MEMBER LAURIE: Okay, so will it be your position that if there is no link, that is if the applicant wants to be able to have the option, that that is a substantial modification to the current application?

MR. MUNDSTOCK: Yes, I mean if you have a project defined by the Committee as a stand-alone ethanol facility --

PRESIDING MEMBER LAURIE: With the option of doing the power plant.

MR. MUNDSTOCK: -- with the possibility of a power plant if the applicant gets what they'd like to have happen, then most likely, and I can't speak for the high decision makers and the staff, most likely staff would conclude that that is a project over which the Commission does not have jurisdiction. That is a project that the County would consider as to whether

the original rezone is still standing, or whether the rezone has to be looked at again by the County, because --

PRESIDING MEMBER LAURIE: Will that intent become clear on or about August 1st, Mr. Grattan?

MR. GRATTAN: Let me -- before I respond to that question, we could get very lost here in semantics.

PRESIDING MEMBER LAURIE: Okay.

MR. GRATTAN: We have asked for an extension for the power plant. We have presented a three-year schedule in which we could bring the power plant to fruition. All we are asking is to stage the ethanol plant. There are no conditions in the license that prevent us from staging the ethanol plant.

There was concern back when that the power plant would be built without the ethanol plant, and therefore couldn't function as a cogenerator. That is not the issue before us and we are not asking for the removal, will not ask for the removal of the cogeneration condition.

PRESIDING MEMBER LAURIE: Okay.

MR. GRATTAN: Our intent, August 1st we asked for an extension of the power plant as permitted, subject to whatever conditions may need to be changed to reflect changed circumstances. And we've asked for three years to try and bring that forward.

PROGRAM MANAGER NAJARIAN: The only thing that staff would ask with regard to that August 1st submittal is that the applicant will address the entire facility.

Mr. Grattan, I think, alluded to in an earlier response the water supply for the ethanol plant. And our feeling is the analysis, the environmental review that we conduct, needs to address the entire facility, not just the ethanol plant because the request for extension is for the entire facility.

So I just wanted to clarify that and insure that that was what --

MR. GRATTAN: We'll address the water and the air for the power plant.

HEARING OFFICER FAY: So this would bring the original power plant up to current LORS, your analysis would?

MR. GRATTAN: That's correct.

HEARING OFFICER FAY: As well as whatever was needed for the ethanol.

MR. GRATTAN: That's correct.

HEARING OFFICER FAY: Okay.

COMMISSION VICE CHAIRMAN ROHY: At this point I cannot recall your May 26 schedule, but I would request that we have a schedule for the three years for the power plant because of the many issues that you will face on transmission, on obtaining an engine, and obtaining an operator.

I know you're quite aware of those. We're also quite aware of those, going through siting cases, that we would like to see some progress along the way should we go ahead with such an extension.

Because I would not like to come up three years from now and say, whoops, we haven't started construction. We know that power plant, you have to get your name on the list sometimes two and three years in advance just to obtain the power plant, itself, in today's market.

So I would assume that we'd have a

relatively detailed schedule.

MS. SUMAIT: Yeah, I mean I think, you know, we could provide you progress reports. We understand that, you know, you just don't want to end three years later and yeah, --

MS. STEVENS: Could I just add one thing about the County's process and the County role in this?

I just wanted to make sure that you understood that anything that happens now, any extension or modification would need an amendment to the zoning agreement that the board of supervisors adopted.

So regardless of what happens here in terms of the project description, the applicants will need to make an application through Sacramento County for that amendment, and there will need to be a concurrent process with the County. And our process involves a number of public hearings and community meetings and a final decision by the board of supervisors to amend that agreement.

And the reason for that is because the condition number one of that rezone agreement specifically referenced the 1995 decision. And any

changes to the '95 decision would need to be adopted by the board of supervisors as well.

HEARING OFFICER FAY: Would you envision that the board would rely on the staff's analysis to support --

MS. STEVENS: Yeah, I mean we envision, as far as what we know at this point, that we'll follow a very similar process to what we followed before, where the CEC takes the lead and then the board would rely on the CEC document for their environmental documentation.

HEARING OFFICER FAY: And as I recall it was a sort of two-stage adoption at the County.

MS. STEVENS: Right, there was a --

HEARING OFFICER FAY: Does the County still favor that kind of approach?

MS. STEVENS: Uh-huh.

HEARING OFFICER FAY: So like a preliminary determination, then the CEC acts. And then the County ratifies its previous preliminary determination?

MS. STEVENS: Yes, uh-huh.

HEARING OFFICER FAY: Okay.

MR. GRATTAN: Did the County do that on the

amendment, the double --

MS. STEVENS: Yes, uh-huh, yes.

MR. GRATAN: Okay.

HEARING OFFICER FAY: So the County has already visited this twice?

MS. STEVENS: Yes.

HEARING OFFICER FAY: Okay.

PRESIDING MEMBER LAURIE: Do you folks have a copy of this zoning agreement?

MR. MUNDSTOCK: The preliminary is in the decision. I have copies of several variations on the zoning agreement because it's been changed a couple times.

PRESIDING MEMBER LAURIE: And what does that zoning agreement do? Is it similar to a development agreement? Is it a conditional type zoning deal?

MS. STEVENS: Yes, it would be an ordinance that the County adopts that applies conditions to the rezoning action.

PRESIDING MEMBER LAURIE: Okay.

MS. STEVENS: It's not a development agreement, as most people know, but it's what we

consider a zoning agreement.

PRESIDING MEMBER LAURIE: Does Sacramento do zoning agreements?

Everybody is shaking their heads.

MS. SUMAIT: We got one.

COMMISSION VICE CHAIRMAN ROHY: I guess for the reporter they're shaking it in the affirmative --
(Laughter.)

COMMISSION VICE CHAIRMAN ROHY: Affirmative heads as opposed to negative heads.

MR. GRATTAN: An enthusiastic shake of the head.

PRESIDING MEMBER LAURIE: I thought I read once 25 years ago that people couldn't do zoning agreements. But I've also heard, I think, that Sacramento has always done it. Okay.

HEARING OFFICER FAY: And so in addition to the hearing process that we have, you would have your own hearing process on added conditions to the zoning agreement or changes to the zoning agreement?

MS. STEVENS: Yes.

PRESIDING MEMBER LAURIE: Can you make a

copy of that agreement available to us?

MS. STEVENS: Yes. Yeah, I have a copy here. I know it's in the Commission decision at the end. It's an appendix.

PRESIDING MEMBER LAURIE: You don't have to do it now. We'll get it from staff.

PROGRAM MANAGER NAJARIAN: We'll provide you a copy.

HEARING OFFICER FAY: Okay, so what you envision is that your August filing would have information on the changes essential to extend the power plant license, and also a full description of the modifications that would be required to build the ethanol, to go ahead and build the stand-alone ethanol plant?

MR. GRATAN: That is correct.

HEARING OFFICER FAY: Okay, so at that point the staff could expect a full project description that they could rely on subject to the usual data requests, and move forward and get it out to all the agencies, et cetera.

And that would include the water supply,

fuel supply and that sort of thing.

MS. SUMAIT: I know I see some of the staff here. I don't know if it would be worthwhile, and we can do it after this, for us to hear, you know, staff's doing an analysis of what our petition is so far, to hear from them where the issues are, so that we can address them in our package.

PRESIDING MEMBER LAURIE: Our suggestion is going to be that to the extent that you all have time left this morning following the conclusion of this meeting, that you avail yourselves of that opportunity.

MS. SUMAIT: Yes, we have a working -- uh-huh.

HEARING OFFICER FAY: Is there anything further, then, on the subject of the project modifications that staff would like to bring to our attention, or the County or the applicant, just in terms of how that would have to be handled?

At this point, Ms. Stevens, are you comfortable with this possibility that the Commission would remain so involved, even though there is this possibility --

MS. STEVENS: From everything that we know -

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HEARING OFFICER FAY: -- of --

MS. STEVENS: Yeah, we've worked well with the CEC Staff in the past, and the process worked well. We have no objection to doing that again. If something changes and it falls back for us to be, you know, compliance monitoring, we're prepared to do that, as well, so.

HEARING OFFICER FAY: Okay, all right. Mr. Tooker.

AIR QUALITY SUPERVISOR TOOKER: I'm Chris Tooker, I supervise the air quality unit at the Commission. I have a question for Gary regarding the process. We met with the air district Tuesday and talked to them about the project and what's before us.

And at that point, Chuck and I pointed out that we felt what was before us primarily was a request for extension of a license of the project as it currently is licensed, including the amendment.

What I've heard today is that the applicant actually wants two things. They want an extension of

their license, but for a modified project. And I'm a little confused as to what we, as the staff, are going to be recommending ultimately on.

It sounds like there are two sides to this coin. One is to extend the license, but for a different project and for some different options. And as I understand it right now, the applicant doesn't have a valid license because it's run out, pending the outcome of this extension request.

So how can you modify a license that doesn't exist until after they get the extension? It's a little confusing to me.

HEARING OFFICER FAY: Well, correct me if I mischaracterize this, Mr. Grattan. I think what the applicant's asking is that rather than just address the extension question, and then only after that allow the applicant to come in the door with its modification proposal, but in August they plan to provide a package that would have details that would cover both, the missing information for the extension, to be sure that the extension could comply with LORS, and also detailed information on their modification.

And that while legally the Commission would obviously have to grant the extension first, that there could be coincident analysis, and that it may be a matter of minutes or days, or a very brief time afterward that the modification, if granted, would be granted.

In other words, the staff would be asked to look at both at the same time, not an either/ or, but the staff would be asked to assume a successful extension. And then, based on that assumption, analyze the modification.

MR. GRATTAN: That is our understanding and that's what we request.

HEARING OFFICER FAY: Okay.

AIR QUALITY SUPERVISOR TOOKER: And in this case, especially if they are going to be requesting the addition of a boiler to the ethanol facility, we may well have some parallel conditions recommended, because the air district, in fact, may be the one to issue the permit for the boiler if it's not part of the power plant.

So we'll have to work those things out.

MS. SUMAIT: That's the way it was last time, I mean we had separate authority to construct for the ethanol plant portion, and then there's a DOC for the power plant. We envision that that would continue to be the case.

HEARING OFFICER FAY: So these would -- well, like you say, parallel. The conditions would be on the boiler directly from the district until such time as the boiler was replaced by the power plant, correct?

MR. GRATTAN: Correct.

HEARING OFFICER FAY: Anything more on that? Does that create process problems? I'm sure it does, but -- challenges --

MR. GRATTAN: While we're on the issue of air quality, it's relevant perhaps to the applicant's intent. It is our intent to provide a water package, or a recommended water package for both plants. Also to update, to the extent it's required, the offset package for the power plant and the ethanol plant.

If our intention were to just go ahead with the ethanol plant we could save ourselves a lot of

planning and a lot of -- maybe a lot of money securing the offsets for the power plant, as permitted. I mean, to that extent, that's a demonstrable indication of our intent.

AIR QUALITY SUPERVISOR TOOKER: I have a question for the applicant in that respect. When you're talking about updating the offset plan or package, are you doing that in the context of the district's current rules and the fact that their trigger level has changed from 50 tons to 25 tons, and the whole offset package will have to be reviewed and perhaps supplemented?

MS. SUMAIT: Yeah, just to remind everyone that the project was double offset with stationary offsets and agricultural emission reduction credits generated from the ethanol plant.

There was a concern from SMUD's point of view that if the ethanol plant wasn't built we wouldn't have emission reduction credits. You know, where we are right now is actually the other case in which there will be an ethanol plant to secure, make sure that there are credits generated from the use of rice straw

and of open field burning.

So I imagine right now that our submittal will focus on the use of the ag ERCs and not so much when we say we're going to give you an offset package, we're not going to go out and buy another set of stationary offsets.

But we have two options under the license and that's the ag ERCs and the stationary offsets. And we will -- you know, the package is going to focus on the use of the ag ERCs.

AIR QUALITY SUPERVISOR TOOKER: But you are aware that because the project may now be a stationary source, the power -- I mean be a major source, that the offsets that you proposed that were stationary may undergo additional scrutiny from the EPA and may or may not be acceptable to them as part of the offset review?

MS. SUMAIT: We understand that --

MR. GRATAN: Oh, yes.

MS. SUMAIT: -- switch from a major source -
- we'll attempt to address that.

AIR QUALITY SUPERVISOR TOOKER: Thank you.

HEARING OFFICER FAY: Okay, anything further

on this?

We asked about status of critical federal permits, and you've gone through that. Anything to add?

MS. SUMAIT: No, we don't have any --

MR. GRATTAN: We did submit --

HEARING OFFICER FAY: You don't anticipate any particular problems?

MR. GRATTAN: We did submit an update package as part of our application with all the federal permits and Necy has been involved in that area more than I have. And if you want to address--

MS. SUMAIT: We don't have anything more to add here, so if there are any further questions we'll address that.

HEARING OFFICER FAY: But I suppose, because some of the infrastructure hasn't been described yet, there's possibly some federal permits regarding water that could come up.

PROGRAM MANAGER NAJARIAN: Yeah, we assume that --

MS. SUMAIT: I guess let me just say that in

even considering modifications we are very careful to make sure that we don't change the footprint. I certainly don't want to reopen a biological opinion with the Fish and Wildlife Service.

So, the modifications, even with the ability to produce citric acid, is a matter of vessels all within an existing footprint that was approved and looked at by Fish and Wildlife.

MR. GRATAN: As well as the gas pipeline.

MS. SUMAIT: The gas pipeline -- there was an issue with the pipeline supply. SMUD was going to be the purveyor of the gas for that project because it was one of several. We talked to Pacific Gas and Electric and they were the service facility. They would choose a route that would interconnect at about the same place where the SMUD route proposed was going to be.

So with regards to that six and a half mile delivery pipeline, it would be along the same route and interconnect at the same point, line. I believe it's line 119, of PG&E. We will provide that in our submittal.

So I don't foresee any changes with regards to the pipeline route.

HEARING OFFICER FAY: Okay. And who would you most likely interconnect with? Would that be --

MS. SUMAIT: I have, you know, the SMUD Elverta Substation or the WAPA Substation is right next to the project. I have the proper contact at SMUD, and I will talk to them about what it would take to, you know, we would now obviously be just another project interconnecting to their substation.

So I've talked to them about what it would take for them, if needed be, to refresh the interconnection.

HEARING OFFICER FAY: So there would be an interconnection study, I assume, at least with SMUD?

MS. SUMAIT: Yeah, the extent of which, and you know, how much we would have to prepare, I think we would want to explore that a little bit more, you know, with staff and the Committee.

HEARING OFFICER FAY: But if you were not able to do that, and you had to interconnect with Western, --

MS. SUMAIT: Western would be another option and we've had very --

HEARING OFFICER FAY: Then we'd have to have a federal EIS, even if it was joint with what staff was doing. But, I mean, that's another wrinkle.

MS. SUMAIT: Right, and that's kind of what -- you know, I understand that and our preferred route is, if it's feasible, would be to interconnect to the SMUD Elverta Substation at this point.

HEARING OFFICER FAY: So your first choice would be the SMUD substation?

MS. SUMAIT: Yes.

MR. GRATAN: Correct.

HEARING OFFICER FAY: Yes, sir, you had a comment?

MR. HOWELL: I'm Tim Howell, that's H-o-w-e-l-l. I'm an attorney with the Department of Energy. And we do have a relationship with Arkenol, and we are providing about \$4 million in financial assistance on the ethanol processing plant only.

And you mentioned that if there was a connection to Western Area Power Administration there

would need to be a NEPA, that's National Environmental Policy Act, which is the national federal equivalent to your CEQA.

We have a similar requirement with the Department of Energy in connection to our financial assistance agreements. And particularly with regard to these federal permits, that will be something which we would require in our own NEPA process, that the recipient make contact and make sure that all the biological opinion that was issued previously is still current. There was a deep water, a deep well water injection permit. I don't believe that will be necessary anymore.

There were also some other consultations with the Corps of Engineers. All those things would still need to be current to satisfy our requirements.

So, anything above and beyond what Chuck Najarian's group would be looking at, we would also make sure that they made those contacts, also.

HEARING OFFICER FAY: Are you essentially a partner in the project now?

MR. HOWELL: We are not a partner.

(Laughter.)

MR. HOWELL: The federal government is not a partner with a recipient. It is a cooperative agreement which means that there's a cost share between the financial assistance offered from the federal government, and also the monies put up by the recipient. But we are not a partner.

There are strings only to the extent that they have to provide us with the proper accounting for the monies they do spend that we provide them. So, very far from a partnership.

HEARING OFFICER FAY: But does it trigger the same level of federal environmental review as if, for instance, they were to connect to Western's substation?

MR. HOWELL: Well, actually we're in the process of trying to determine the level of our analysis. Our analysis would either be that of an environmental assessment or that of an environmental impact statement.

And that is one thing that I've had discussions with Chuck Najarian from your staff. And

we are trying to take our cue from the CEQA analysis. The analysis you did in 1995 would be equivalent to what our environmental assessment, with a finding of no significant impact, but with mitigated circumstances.

So we call that a mitigated FONSI. It depends on the extent of the additional analysis that would be required after the appropriate scoping meeting that you appear to be recommending; and then your findings.

We're kind of a smaller portion of this overall big picture. So we are trying to take our cue from whatever the requirements that California will add to the additional analysis. We do not want to compile and compound the situation by just adding on requirements just to add on requirements.

So we're trying to sit back and wait until the State determines what your needs are, because we do not want to be in a position to be second guessing the State, the local experts here. So we want to take our cues from you folks.

HEARING OFFICER FAY: That's commendable. I'd just like to observe, though, that if what you

decide is an environmental assessment as the appropriate document, would that be sort of like a Neg Dec with conditions?

PROGRAM MANAGER NAJARIAN: It sounds like it.

HEARING OFFICER FAY: Sounds like it. Anyway, let's not characterize it --

MR. HOWELL: Right, your forms are somewhat different, so it's a little hard to --

HEARING OFFICER FAY: Right. A lower level of review, as opposed to a full EIS. I think it would be much smoother. We just went through a full EIS parallel or tandem -- tandem and then parallel, with Western.

And we got down the track quite a ways cooperatively, and then they realized that there were institutional differences that they couldn't live with.

What they thought was a final agency document was labeled a final staff document. And, in fact, it was a final staff document.

We have this difference here where there's Commissioners, and the staff is an independent party.

So what the staff puts out is not what the Energy Commission puts out.

So I just want to sensitize you to that, so that we don't lose time later through, you know, some confusion on this.

MR. HOWELL: Right, I appreciate that. We've had similar experiences in Minnesota with a state level environmental assessment, and we are aware that they are different. That's why we're --

HEARING OFFICER FAY: But in terms of --

MR. HOWELL: That's why we're kind of waiting for --

HEARING OFFICER FAY: Right.

MR. HOWELL: -- you to decide your process, then --

HEARING OFFICER FAY: Right, we have no apologies about the technical depth and breadth that this agency covers, because I think it covered at least what Western would have done on its own, and I think they would agree. But the labeling did give them a problem. And that caused a little wrinkle kind of late

in the process. So if we can anticipate that, it will probably work better.

MR. HOWELL: Right. But I did want to underline that we are only involved in the ethanol processing part of this project.

MR. GRATAN: If I can add, my understanding, Tim, from you is that in DOE's environmental review your focus, your project is the ethanol plant, but you are required, under NEPA, to look at the power plant --

MR. HOWELL: Yes.

MR. GRATAN: -- as a cumulative impact?

MR. HOWELL: That is, irrespective of whether or not the power plant is ever built, as long as it is tied with the ethanol plant, we will need to have a cumulative impact analysis of what I would call the downstream effects of having a power plant, all the collateral effect that a power plant might have, all the analysis. I believe you called them project impacts in your 1995 findings and conclusions.

But we will have to have a similar type of analysis of that in our own document, as well.

PRESIDING MEMBER LAURIE: Okay, well, the question that the Committee will have to get a better understanding of is how our decision making is affected by your environmental analysis. And I don't want to discuss that today, because we don't have to know that answer today. But we do have to know it tomorrow. And maybe you folks have an understanding, Mr. Fay, maybe you have an understanding. I don't have an understanding today. But perhaps that can be discussed at 11:00 o'clock.

But we have to know whether our decision is going to be based in whole or in part upon any federal environmental analysis. If so, we have to make sure that the two processes do run in tandem.

MR. HOWELL: Right. I've been trying to coordinate things with Mr. Najarian.

HEARING OFFICER FAY: Okay. Thank you for that input, Mr. Howell.

And can I ask both of you, the applicant, if it just be a priority to inform the Committee if you begin to consider tying into the Western substation, let us know as soon as possible. Because, you know,

the environmental review clearly would be different. And instead of DOE's level of examination, we'd be kicked up into, I assume, a full federal EIS. And we'd want to coordinate that.

PRESIDING MEMBER LAURIE: Mr. Chaddock, you'll have an opportunity to ask questions before we terminate the meeting today.

MR. CHADDOCK: Thank you.

HEARING OFFICER FAY: Okay, anything further on the federal permits anticipated?

All right, if there's nothing further then, I'd like to get into the time schedule, because if we can set out some expectations as realistic as possible, it gives us a yardstick to see how we're doing. And if we need to adjust them later, and there's a good reason to do so, we can certainly do that. But I just think to help us all schedule our time, this Commission has a big caseload, we've got to juggle this with a lot of other proceedings.

So, why don't I go first to Mr. Grattan. You've seen what the staff has. It seems different from yours. But perhaps not so much in the big

picture.

They seem to be getting a lot of products earlier and kind of piecemealing it, and I'll let them explain why they did that. Yours seems simpler.

MR. GRATAN: Their schedule is more detailed. And we're willing to work, since they provided the more detail, with that schedule. We don't think it's out of line. We're 15 days to 30 days apart. If we can keep by that we're real happy and we're real pleased that that detail's been provided.

HEARING OFFICER FAY: Mr. Najarian, anything to add?

PROGRAM MANAGER NAJARIAN: Yes, I do have several things to add. When we developed this schedule we wanted to try to be as flexible as we could, and hence we bifurcated the analysis in order to complete certain aspects of our review earlier.

Upon reflection of that, we're more inclined to agree with the applicant's schedule --

PRESIDING MEMBER LAURIE: Well, you can't, because he just agreed with your schedule.

(Laughter.)

PROGRAM MANAGER NAJARIAN: I realize that. I felt he had some flexibility in his response, as well.

What we want to avoid, I think, in doing some analysis earlier is confusion that could possibly arise. And the fact that you alluded to earlier, that we would conduct some analysis potentially that might not be necessary, or might not be appropriate.

In fact, we'd be conducting in our schedule some analysis prior to the August 1st submittal by the applicant, and that concerns me as well.

So there's some new information we have now that we didn't have at the time we did this. Our preference is to have one due date for a staff analysis and it would spin off of the applicant's August 1st submittal.

HEARING OFFICER FAY: Are you both cranking in a 30-day review period and what product would that be on the staff analysis?

PROGRAM MANAGER NAJARIAN: We're assuming that the staff analysis would be required to undergo a 30-day public review period.

HEARING OFFICER FAY: And my guess is that sometime after that comes out we could have a prehearing conference to set the hearings, since the issues and the extent of the evidence would probably be fairly evident by then?

PROGRAM MANAGER NAJARIAN: That's correct.

HEARING OFFICER FAY: We could decide how the hearings would be run, and then the staff analysis would essentially be staff testimony as it is in a siting case.

PROGRAM MANAGER NAJARIAN: Another point on our schedule. There were assumptions here, for example, assumptions concerning when the air district would be able to complete their analysis.

After meeting with the air district several days ago it's quite clear at this point that they will not be able to conduct their analysis by August 1st. I'm not sure if they'll have a proposal from the applicant by then in order to conduct their analysis.

But in any event, our staff would be coordinating the air quality analysis with the air district.

So, I'm not sure if the applicant has a better reading on that in terms of where the air district would be, but they indicated to us that once they received an application it could take as long as 180 days, depending on what's involved in the review.

So, that really throws the schedule back considerably, because air quality's an integral part of, you know, of our review.

HEARING OFFICER FAY: So if they got everything they needed on October 1st, --

PROGRAM MANAGER NAJARIAN: August.

HEARING OFFICER FAY: -- August 1st, rather, and that could be 180 days after that before they --

PROGRAM MANAGER NAJARIAN: They indicated they would like to streamline this as much as they can, but they described to us their workload, and it's quite extensive. And their only characterization was that it could take as long as 180 days.

Their preference is it doesn't take that long, but they can't -- they weren't able at the time to --

HEARING OFFICER FAY: What else are they

going to say?

MR. GRATTAN: Yeah, that's the legal --

HEARING OFFICER FAY: I don't know if we can bank that --

MR. GRATTAN: -- that's the legal extent of time that they have. We met with them and we were fairly impressed with their desire to cooperate.

HEARING OFFICER FAY: Okay.

AIR QUALITY SUPERVISOR TOOKER: Gary, I'd like to just provide some perspective on that. Typically when a district does a determination of compliance review for a power plant, the two major portions of their review are best available control technology determinations and offsets. And those are both issues that have to be revisited on this case.

So it's not surprising that not even given their workload that they may be looking at a significant timeframe in terms of reviewing the project proposal for those two issues.

HEARING OFFICER FAY: Why don't you go ahead. You were fairly happy, Mr. Grattan, with their response? You thought they were optimistic about how

long it would take them?

MR. GRATAN: No, I didn't say I thought they were optimistic. I said we were optimistic at their desire to compress that legal limit of 180 days down to something that might work within this framework.

And while I agree that offsets and BACT review are a major part of a DOC, we do have some history here, we do have something to build on. We do have a permitted BACT which is that far away from what appears to be BACT now. And the applicant will cooperate in every, you know, --

HEARING OFFICER FAY: So this schedule reflects that point of view?

MS. SUMAIT: Yes.

MR. GRATAN: Yes.

HEARING OFFICER FAY: Your discussion with the district is reflected in this schedule?

MR. GRATAN: Well, we anticipated our discussion. We did the permit --

HEARING OFFICER FAY: Well, I'm just trying to get a sense of if these cautions that we were just

told are contained within your schedule, or if perhaps we need to spread your schedule out a little --

MR. GRATAN: We wouldn't propose to spread that schedule out. If unanticipated difficulties arise, then we would propose to bring that before the Commission. But we don't propose compressing the schedule based upon difficulties that haven't arisen yet.

HEARING OFFICER FAY: I'm not sure we could have a Committee recommendation 30 days after the staff analysis was first published because from the time the staff analysis is published there would have to be adequate time for the parties to digest that, and come to hearings, get it into the evidentiary record, and then for the Committee to take that and deliberate and write it up. It seems to me that parties need, you know, 14 days to look at the stuff before they testify on it.

And the Committee might need a little more time to write it up, because this is potentially pretty complex, I wouldn't say like a whole power plant case, but there's a lot there with the changes and all.

So I'm not sure that the Committee could meet the schedule you recommend.

PROGRAM MANAGER NAJARIAN: There were several other assumptions that staff had. Staff will not be doing its analysis in a vacuum. We'll be coordinating with other responsible agencies. And staff hasn't started that work at this point.

So it's unclear -- in other words, we have to account for their schedule and their ability and what they think is necessary. And there's some questions we still have about that. We're hoping that there's nothing substantial that's required.

HEARING OFFICER FAY: Can you save some time by -- I mean are there some things you can do before the August 1st package comes in?

PROGRAM MANAGER NAJARIAN: Yes, there are.

HEARING OFFICER FAY: Okay.

PROGRAM MANAGER NAJARIAN: Including starting the coordination and making sure the other agencies are aware.

HEARING OFFICER FAY: Right. So even if the Committee doesn't call for products before that time, -

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PROGRAM MANAGER NAJARIAN: That's correct.

HEARING OFFICER FAY: -- the staff can be working on this.

PROGRAM MANAGER NAJARIAN: And it would be vital to do that. We also assumed in this schedule that there wouldn't be any need for data requests after the submittal. In other words, the submittal's complete. And hopefully if we coordinate appropriately that will occur.

AIR QUALITY SUPERVISOR TOOKER: But, Chuck, I think by the same token, we'd also assume that the existing record would be used as the basis for our analysis, and so in many areas it wouldn't require the additional time that it might otherwise take for creating that record.

Even in the area of air quality, I mean the project, as proposed, the power plant still will have the same emissions, have the same design. That's already in the record. We will base our additional analysis on that, and that's something typically that would have taken more time for us.

stuff, ourselves, and so the public can, also.

Okay, --

MS. STEVENS: If I can interrupt real quick here --

HEARING OFFICER FAY: Yes.

MS. STEVENS: She needs to leave, but I just wanted to make sure that -- this is Karen Ziebron, who's the Chief of Staff for Supervisor Roger Dickinson for the area. So I just wanted to make sure that her presence was acknowledged.

PRESIDING MEMBER LAURIE: Welcome.

MS. ZIEBRON: Thank you, and I apologize for being late and having to leave early, but everybody knows where to get ahold of me, I hope, if you have any questions.

PRESIDING MEMBER LAURIE: Are you getting notice?

MS. ZIEBRON: Yes, I am.

PRESIDING MEMBER LAURIE: You are, okay.

MS. ZIEBRON: Thank you.

HEARING OFFICER FAY: Is it in Supervisor Dickinson's district?

MS. ZIEBRON: Yes, it is.

HEARING OFFICER FAY: Okay.

MS. ZIEBRON: And we followed the process before extensively.

HEARING OFFICER FAY: Yeah, and these little details are very important, particularly in a case like this that has a history of controversy. We want to be sure that any decisions that are made by the Commission can be fully justified, and that any member of the public can find out why, you know, where the reasoning is, and that sort of thing.

MS. ZIEBRON: Right. Thank you.

HEARING OFFICER FAY: Good, thanks for coming.

All right, anything further then on the schedule? I may have misspoken earlier. I think we could probably have a prehearing conference before the staff product came out. But, the parties would have to, you know, convince the Committee that they have enough information about the issues so that we can have an intelligent conference to schedule the hearings.

Obviously we need to know what's going to

take the most time and how many witnesses, et cetera.

Now, I'd like to take public comment now. We have a card from Chris Chaddock in Elverta. And he's got a couple questions. Did you want to pose those questions to the people here?

MR. CHADDOCK: Yes, I would. Yes, my name's Chris Chaddock. And I'm a property owner adjacent to the proposed power plant, and in the process of trying to become a larger property owner adjacent to the property of the power plant.

And I contacted Dickinson's office before we bought the property, and as of even two months ago, and they informed me that all this was -- no longer had any interest at all. So I'm a little on the ignorant side of what all has taken place and is going to take place.

One of the questions was do they indeed own the property as of this present time? Would this license be transferrable to another location? And in the air quality assessment, is silica being generated by the burning of rice straw going to be addressed in the air quality type of thing.

And I'm sure the drainage, because the

drainage goes directly through my property as a natural type of situation occurs, that will be addressed? I'm pretty sure, but I wanted to try to --

MS. SUMAIT: I can try to address your concerns. With regards to site control, we have site control. We have, our option agreement is in place with the owner. We continue to make payments, so that is in place.

With regards to the silica issue, the silica in the rice straw is extracted when we process the rice straw, extract the silica, and convert it into a useful product. And it's not, rice straw is not being burned.

It is being converted to sugars which are then converted to products. So the silica is not going up in the air.

MR. GRATTAN: The power plant is a natural gas power plant.

MS. SUMAIT: The power plant is a natural gas power plant.

MR. CHADDOCK: Oh, it's not going to be burning the rice straw?

MS. SUMAIT: No, --

MR. GRATAN: No.

MS. SUMAIT: -- it will not.

MR. CHADDOCK: Okay. So that I do understand, you are not the property owner at this time?

MS. SUMAIT: We have an option agreement in place. It's actually a purchase and sale agreement in escrow.

MR. CHADDOCK: Okay. And that is in place for what period of time?

MS. SUMAIT: It is current. You know, obviously we don't want to spend, you know, we've got to make sure that we can get our permits to close the ownership, close the escrow on that property. But we have control of the property at this time.

HEARING OFFICER FAY: And did you have a question about drainage, also?

MR. CHADDOCK: I think she addressed that.

PRESIDING MEMBER LAURIE: Well, let me do this. You're free to talk to the applicant anytime; the applicant is free to talk to you anytime. And I

anticipate that they will.

I also want to note that there will be a series of public hearings where formal evidence will be taken. You will be going through an educational process. The applicant, I'm sure, will be making themselves available to you as will Mr. Dickinson's office.

And so I would encourage you to, through the Public Adviser's Office, if necessary, develop your list of questions, and I'm sure the applicant, or if not applicant, staff, or all will seek to respond to your questions. Always know for purposes of the Committee that as a member of the public your views and thoughts and comments will always be solicited.

MR. CHADDOCK: Okay, yeah, like I say, my ignorance was I thought this was no longer being pursued. Thank you.

HEARING OFFICER FAY: And, you know, to the extent you're in communication with your neighbors, please let them know that there is a proposal to extend the license, and we want everybody to be informed.

We did put out notice on the old proof of

service list, and so people who are still at the same address that were involved in the project earlier, are being informed about it. But addresses change and that sort of thing, so we do want the word to get out.

PRESIDING MEMBER LAURIE: Well, notice should be current proof of service.

HEARING OFFICER FAY: Well, it's as current as any of the people who participated in the case have made it. But if somebody moved away, we're sending notices to that address of the person no longer there, things like that change over time. And that's part of the, you know, part of the challenge of extending the license.

PRESIDING MEMBER LAURIE: What's the rule regarding notifying adjacent property owners? Is there a footage, 600 feet?

MS. STEVENS: The County has a 500 foot notification. But our notification would be for the public hearings before the board of supervisors and the planning commission and the CPAC.

PRESIDING MEMBER LAURIE: What do we use, Chuck?

PROGRAM MANAGER NAJARIAN: We can coordinate with the County to update our list. We have an old list. It's a post-certification list. It's five years old. So, I think we could update it simply by coordinating with the County.

HEARING OFFICER FAY: And to specifically answer your question, I think our requirements are triggered when an application is filed. So we have this unusual situation here, it's many years later and -- what, seven years later after the original application was filed, at least. And our adjacent land owners' list is not current and it's not required to be used under the regs.

So, I think, based on what Commissioner Laurie has indicated, it would probably be a good idea if staff could provide the Committee with an updated adjacent property owners list so that future hearings we could send a broad notice out to everybody who may be close to this.

PROGRAM MANAGER NAJARIAN: We'll do that.

HEARING OFFICER FAY: And we'll try to notify them in terms of participating in the

proceeding. We've made that attempt already but it wasn't based on a property owners list, so that would be an improvement.

PROGRAM MANAGER NAJARIAN: I just want to add to that so that there's not -- when we first noticed the May 26th business meeting we notified the mailing list. There was a lot of communication from property owners. I had a number of phone calls that I responded to.

It appears as though the word was out because not only that, we understand that the local newspaper has been publishing information about the project. So we don't feel like -- we can do better, and we will, we'll get that list updated. But there has been, I think, adequate notice to this point, at any rate.

HEARING OFFICER FAY: Okay. Anything further from the parties?

PRESIDING MEMBER LAURIE: We'd be interested in, to the extent that the parties wish to avail themselves, continue a staff discussion. What I think we want to do is issue a scoping order following

receipt of recommendations and proposals from parties as to the scope of environmental analysis and review.

We'll then issue an order based upon the questions earlier propounded and the proposed scoping order.

Timing. I don't know how much disagreement there may be as to when you'd like to provide an additional submittal on scoping. What's your suggestion, Mr. Fay? It could be done in five days.

HEARING OFFICER FAY: Well, I mean, are the parties capable of spending a few hours now, looking at this?

PROGRAM MANAGER NAJARIAN: Staff is available.

HEARING OFFICER FAY: I was thinking if we gave you 14 days to get something filed with the Committee would that be enough time, or --

PRESIDING MEMBER LAURIE: Is that too much time?

HEARING OFFICER FAY: -- too much time?

PROGRAM MANAGER NAJARIAN: Regarding the scope?

HEARING OFFICER FAY: Yeah.

MS. SUMAIT: Yeah, shorter.

HEARING OFFICER FAY: That way if you didn't wrap things up today, get back in touch with each other.

PROGRAM MANAGER NAJARIAN: I would like to do something by the end of next week, if possible, on communicating back to the Committee.

PRESIDING MEMBER LAURIE: Have something submitted?

PROGRAM MANAGER NAJARIAN: Yes.

PRESIDING MEMBER LAURIE: Well, then let's make it close of business next Thursday. If you can submit a combined proposal, that's fine, no necessity to do that.

HEARING OFFICER FAY: So that's COB July 8th, close of business on July 8th. That would be due in the docket.

PROGRAM MANAGER NAJARIAN: For clarification that is with respect only to the scope of the analysis, but also to the format and our streamlining approach.

PRESIDING MEMBER LAURIE: If you want to

submit additional recommendations beyond merely the scope that you folks can mutually agree to and offer up, we'll be glad to hear it.

HEARING OFFICER FAY: Is that acceptable, Mr. Grattan?

MR. GRATTAN: Yes.

HEARING OFFICER FAY: Okay?

MR. GRATTAN: Yes.

HEARING OFFICER FAY: Mr. Mundstock, can you meet that deadline?

MR. MUNDSTOCK: We'll try.

PROGRAM MANAGER NAJARIAN: We'll meet the deadline.

HEARING OFFICER FAY: Okay, good.

PRESIDING MEMBER LAURIE: Okay, the meeting of the Committee will be deemed adjourned. We thank the attendance of Sacramento County, and applicants and staff and members of the public.

The next thing we'll see will be a Committee order establishing scope and some time tables.

And I think that's it. Thank you very much.

(Whereupon, at 10:50 a.m., the conference

was adjourned.)

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CERTIFICATE OF REPORTER

I, PETER PETTY, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Conference; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said Conference, nor in any way interested in the outcome of said Conference.

IN WITNESS WHEREOF, I have hereunto set my hand this 9th day of July, 1999.

PETER PETTY